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Re: Conference with Charles Sweeny at FTC, October 14, 1966

Senator Clements, Stan Temko and Abe Krash met this morning with Charles Sweeny at the FTC from about 10:15 to 11:15.

The salient points of the discussion were the following:

(1) Sweeny has transmitted a report to the five Commissioners with respect to the tar and nicotine testing laboratory. He has recommended that the Commission not take any firm position at the present time with respect to a number of the key issues, including butt length, dual testing (per puff and per cigarette) and the extent of the testing, both as to number of samples and number of brands. Sweeny's comments indicated that his report must have been fairly extensive. It included a memorandum of his own commenting on various points and numerous appendices which apparently consider all the major points involved. The appendices included the memorandum and two supplements prepared by the industry technicians, and various reports prepared by the FTC staff, including a report by Pillsbury which includes comments on his visits to industry laboratories and reports by Irish, and Dr. Dobbs.

In connection with Pillsbury's industry visits, Sweeny noted specifically that Pillsbury had reported that he had been courteously and properly received by the companies. He went on to say his staff had selected a number of scientifically qualified candidates for the Pillsbury job whom he had interviewed and that he had personally

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selected Pillsbury as the one who would be conservative, responsible and discreet.

(2) Sweeny said that the recommendation had been made in favor of dry as against wet testing, but added the caution that this was subject to review by the Commissioners. He did not indicate to us the nature of the preliminary recommendation with respect to butt length but he indicated that this matter was discussed in the report.

(3) Sweeny reported that he had discussed the collection of samples with Western Union representatives in Washington. They told him they felt that there might be a legal problem involved in their shipping cigarettes interstate which they wanted to check with their New York counsel. Sweeny also said that he had advised the Western Union representative that the Tobacco Institute would probably wish to arrange for parallel collection of samples. He said he was awaiting word from Western Union. Sweeny also said that he had covered the parallel sampling point in his memorandum to the Commission and had indicated that he saw no reason why this would not be all right.

(4) With respect to the number of brands to be tested, Sweeny said there were a number of problems which had not yet been resolved. He pointed out that the idea of a test laboratory had originated because of the Commission's feeling that in its

regulatory function, the Commission should be in a position to check various cigarettes making claims as to tar and nicotine. This would have entailed, he implied, the testing of a very limited number of brands. He pointed out that the original purpose of the laboratory had been altered, however, by the request made to the Commission by Senator Magnuson, and that the Commission's task had broadened even more when the Public Health Service, in reply to Congressional inquiry, had said that it saw no reason to duplicate testing operations which the FTC was undertaking.

Senator Clements said he felt that the Commission would not wish to engage in any kind of testing program unless it was carefully conceived and would involve the testing of cigarettes of all companies. He pointed out that a testing program involving only some leading brands could result in excluding the brands of other companies. Sweeny said the Commission would want to test all brands with appreciable sales which made any reference to tar and nicotine. We indicated that a fairly complete list of brands being marketed was included in the Printers' Ink report prepared by Mr. Maxwell which the Commission itself had relied upon in its report on the Trade Regulation Rule. Sweeny said that the FTC had access to the Internal Revenue Service reports on brands, and from these it could arrive at a fairly reliable share of market figures. We urged strongly that the testing program include all brands, with

Senator Clements emphasizing the unfairness and vulnerability, in Congress and elsewhere, of any program which did not test the products of all the cigarette companies.

Sweeny pointed out that no decision had been reached concerning the number of cigarettes to be smoked for purpose of arriving at a test result, indicating that this could affect the number of brands tested. Sweeny said that at this point even the Commission's own statisticians refused to give them any conclusions as to the number of cigarettes which would have to be tested for accurate results. At one point, Sweeny suggested that the Commission might find it necessary to obtain another test machine. Senator Clements indicated that realistically they might need a third one.

(5) Sweeny clearly showed that he was sensitive to the competitive implications of a test program which embraced only a limited number of brands. For example, he volunteered that if only 10 brands were to be tested, representations might well be made that one of these brands was the cigarette with lowest tar and nicotine available, when in fact there were other brands on the market that were lower.

(6) In a reference to dual testing, Senator Clements mentioned that if the Commission should test only on a per cigarette basis, and not include a per puff test, all of its initial reports on the single basis would be suspect, particularly if the Commission

staff later recognized that the per puff test was necessary.

(7) At an early point in the conference, Sweeny said that he believed the Commission would not be ready to announce any test results before the first of the year. He subsequently indicated that he did not feel that any test results would be made public by the Commission before Spring. He said that after the testing began, the Commission laboratory people would probably feel that they needed a "shake down cruise". He also said that after a week or so of testing, the laboratory director would probably want to consult with industry technicians. Senator Clements pointed out that the FTC might well wish to have industry technicians visit the laboratory and Sweeny indicated that this might be desirable. Sweeny, in stating that testing results would not be available until the spring, said that he hoped the Commission would successfully resist any Congressional pressure for early disclosures. He and Senator Clements both seemed clearly agreed that it would be essential that the initial figures be soundly conceived and on several occasions Sweeny expressed his great desire that any test results issued by FTC should be accurate. Senator Clements said that the industry was interested in parallel testing because of the common concern which Sweeny and he shared that the tests be as accurate and technically sound as possible.

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(8) With respect to the FTC laboratory, Sweeny reported, with a note of impatience, that they were still awaiting the receipt of laboratory benches and they had been delayed in setting up the laboratory. He said that the entire testing program was one of the most difficult and frustrating projects in which he had participated.

(9) Sweeny said that at the time of its announcement concerning tar and nicotine claims in March, the FTC was aware of the testing program being carried out by Roswell Park. He also said the Commission had received information from a variety of other sources, whom he did not identify, which he said indicated to the Commission that there was a serious question concerning the tar and nicotine matter. Sweeny said his statement as to Roswell Park was "off the record". In this connection, he added that the March Commission announcement was not designed to scuttle the Cigarette Advertising Code but that the Commission obviously was not going to mention the Roswell Park studies as one of the reasons for its March announcement.

(10) Sweeny said that he was very much concerned with any reports which would give tar and nicotine content down to, say, a decimal point. He said that everyone recognized that the content of cigarettes of any particular brand could vary and that consideration was being given to suggesting that any reports be made in terms of range, say 17-19, rather than one figure.

(11) Senator Clements emphasized again at the conclusion that the industry stood ready to cooperate with the FTC. Sweeny acknowledged this cooperation and said he had reported it to the Commission. He said he also recognized that at some point there might be a divergence of views between the FTC and the industry but he felt that we should attempt to "stipulate" as much as we could and to work together.